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EXAMINER

WALKER, NED ANDREW

ART UNIT

PAPER NUMBER

3781

MAIL DATE

DELIVERY MODE

04/28/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/566,537

**Applicant(s)**

JOHNSON, JAMES

**Examiner**

NED A. WALKER

**Art Unit**

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 January 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/ICE)
- Paper No(s)/Mail Date 09/21/06.
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Specification***

1. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. The title should include at least one technical or inventive feature set forth in the application.
2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter (37 CFR 1.75(d)(1) and MPEP §608.01(o)) with respect to the Amendment filed September 16<sup>th</sup>, 2008. Correction of the following is required:

Claim 5 recites the limitation "the cap includes a locking ring that cooperatively engages an annular projection located on an inner edge of the tamper evident band". It is not clear from the Specification how a locking ring is present on the cap and how it engages the tamper evident band which also exists on the cap.

### ***Drawings***

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the limitation "the cap includes a locking ring that cooperatively engages an annular projection located on an inner edge of the tamper evident band in the pre-cap position and in the full cap position the annular projection located on an inner edge of the tamper evident band is engaged beneath the locking ring" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

#### ***Claim Objections***

4. Claim 1, lines 15 and 17, are objected to because of the following informalities: please change "external rib" to "external annular rib" to in order to accurately and consistently reflect the term's antecedent basis. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the

art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claim 5 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Specifically, claim 5 recites the limitation "the cap includes a locking ring that cooperatively engages an annular projection located on an inner edge of the tamper evident band". It is not clear from the Specification how a locking ring is present on the cap and how it engages the tamper evident band which also exists on the cap.

7. Claim 5 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Specifically, claim 5 recites the limitation "the cap includes a locking ring that cooperatively engages an annular projection located on an inner edge of the tamper evident band". It is not clear from the Specification how a locking ring is present on the cap and how it engages the tamper evident band which also exists on the cap.

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 2-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 recites the claim language "the assembly having a first position in which the cap and the tamper indicating band are received on the upper end of the spout and a seal is provided between the cap and the spout and from which when the cap is removed the tamper indicating band remains attached to the cap" in lines 5-7. It is unclear as to "from which" refers to in the claim, thereby rendering the claim indefinite.

Claims 4 and 5 recite the limitation "the pre-cap position" and "full cap position" throughout. There is insufficient antecedent basis for this limitation in the claim.

Claim 5 recites the claim language "the cap includes a locking ring that cooperatively engages an annular projection located on an inner edge of the tamper evident band in the pre-cap position and in the full cap position the annular projection located on an inner edge of the tamper evident band is engaged beneath the locking ring" in lines 5-7. This language is awkward and unclear to the Examiner and the Examiner fully does not understand the intention of the Applicant's language. For these reasons, the claim is indefinite.

Claim 3 is rejected for incorporating the errors from their respective parent claim by dependency.

#### ***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**11. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Kuenzig (US Pat. No. 4,566,601).**

Regarding claim 1, Kuenzig discloses a tamper evident assembly for use with a fluid dispensing container for flowable material (FIG. 1), the assembly comprising: an annular flange (92) for attachment to a container, a spout (12) projecting upwardly from the flange and having an upper end and a lower end, the spout defining a dispensing passage therethrough and having at least one external annular rib (67); and a cap (11) having a top with an external depending skirt (21) and a tamper indicating band (34) releasably attached to the skirt, the cap further including an internal skirt (17) depending from the top and spaced inwardly from the external skirt and operable to be received within the fluid passage to provide a seal between the cap and the spout (FIGS. 1-3); the assembly having a first position in which the cap is received on the upper end of the spout with the tamper indicating band abutting the external rib and the internal skirt being received within the passage and providing a seal therebetween (from FIGS. 1-3, one of ordinary skill would anticipate that the initial installment of the cap would dictate that the related structures would have this orientation), and a second position in which the cap is located on the lower end of the spout with the external rib located between the external skirt and the tamper indicating band and the upper end of the spout located adjacent the top of the cap, the internal skirt being received within the passage and providing a seal therebetween (FIG. 2).

Regarding claim 2, Kuenzig discloses a tamper evident assembly for use with a fluid dispensing container for flowable material (FIG. 1), the assembly comprising: an annular flange (92) for attachment to a container, a spout (12) projecting upwardly from the flange and having an upper end and a lower end, the spout defining a dispensing passage therethrough (FIGS. 1, 3); and a cap (11) sized to be received on the spout and having a tamper indicating band (34) releasably attached thereto, the assembly having a first position in which the cap and the tamper indicating band are received on the upper end of the spout and a seal is provided between the cap and the spout (from FIGS. 1-3, one of ordinary skill would anticipate that the initial installment of the cap would dictate that the related structures would have this orientation) and from which when the cap is removed the tamper indicating band remains attached to the cap (one of ordinary skill would anticipate that the cap's lower bead 26 would not have passed over external annular rib 67 at this point so it would therefore be possible to remove the cap without the use of the tamper band), and a second position in which the cap and the tamper indicating band are located adjacent the lower end of the spout and a seal is provided between the cap and the spout and from which when the cap is removed the tamper indicating band detaches from the cap and remains on the spout, thereby providing evidence of tampering (FIG. 2).

Regarding claims 3-5, Kuenzig discloses a tamper evident closure and dispensing assembly for use with a container for flowable material (FIG. 1), the closure comprising a cap (11) and a spout (12) secured to the container, the cap having a frangible tamper evident band (34) associated with it, the cap having an annular recess



(22) for frictionally engaging a top portion (52) of the spout, the cap and spout having cooperating detent and locking elements to allow the assembly, when secured to a container to move from a first position where the cap is removably sealed to the spout and the tamper evident band is not broken when the cap is removed for filling (one of ordinary skill would anticipate that the cap's lower bead 26 would not have passed over external annular rib 67 at this point so it would therefore be possible to remove the cap without the use of the tamper band), to a second position when the cap is removably sealed to the spout and the tamper evident band is broken upon removal of the cap to dispense flowable material (FIGS. 2, 4); wherein the cap includes an internal skirt (17) depending from a top portion of the cap and spaced inwardly from the cap sidewall, the frangible tamper evident band depends from the lower edge of the cap sidewall (FIGS. 1-3) and the area between the sidewall and the internal skirt forms the annular recess in the cap (FIG. 1) and includes a lower (26) and an upper (23) detent that determine the pre-cap and full cap positions, respectively for the top portion of the spout that is sealingly and frictionally engaged within the annular recess of the cap when the assembly is in use (FIG. 2); wherein the cap includes a locking ring that cooperatively engages an annular projection located on an inner edge of the tamper evident band in the pre-cap position and in the full cap position the annular projection located on an inner edge of the tamper evident band is engaged beneath the locking ring, whereby in the pre-cap position the frangible tamper evident band is not broken upon removal of the cap, but in the full cap position, the frangible tamper evident band must be broken to remove the cap (FIG. 1).

**Conclusion**

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NED A. WALKER whose telephone number is (571)270-3545. The examiner can normally be reached on Monday - Friday 7:30 AM - 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Anthony D Stashick/  
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NW